



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09 667,284	09 22 2000	Thomas D. Dickson JR.	8132	1192

7590 01 30 2002

L. Grant Foster
Foster & Foster LLC
602 East 300 South
Salt Lake City, UT 84102

EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 01 30 2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/667,284

Applicant(s)

DICKSON ET AL.

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-40 is/are pending in the application.
- 4a) Of the above claim(s) 13-40 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12, drawn to a blending apparatus, classified in class 99, subclass 275.
 - II. Claims 13-29 and 34-40, drawn to a method of preparing a beverage, classified in class 426, subclass 519.
 - III. Claims 30-33, drawn to a peristaltic pump, classified in class 417, subclass 474.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus of group I can be used to practice another and materially different process from that of group II, such as blending of other materials not limited to just foods or not automatically introducing foods upon request.
3. Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In

Art Unit: 1761

the instant case the different inventions are a blending apparatus and a peristaltic pump.

4. Inventions II and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are a method of blending foods and a peristaltic pump.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, which is not required for Group III; restriction for examination purposes as indicated is proper.

7. During a telephone conversation with L. Grant Foster on January 22, 2002 a provisional election was made with traverse to prosecute the invention of group I, claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-40 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

8. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim

remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Objections

9. Claim 1 is objected to because of the following informalities: it recites "a foodstuffs" in line 4. Appropriate correction is required.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-7, 9, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Reese et al [Pat. No. 5,619,901].

Reese et al teach a blending apparatus comprising a container at a blending location (Figure 1, 13), liquid supply lines (Figure 10B, 41), a blending device (Figure 1, 12), an ice supply which acts as a refrigeration system (Figure 2, 19), and a control panel with a microprocessor (Figure 1, 54). Phrases such as "wherein the foodstuffs comprise..." are merely preferred methods of using the claimed apparatus and as such are not given patentable weight.

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al.

Reese et al teach the above mentioned concepts. Reese et al do not recite a cleaning location with a liquid or six supply lines. It would have been obvious to one of ordinary skill in the art to provide a sink with warm water in the invention of Reese et al in since this was the commonly known means to clean containers. It would have been obvious to one of ordinary skill in the art to provide six supply lines with the invention of Reese et al since Reese et al already illustrates four supply lines (Figure 1), since Reese et al teach using "any reasonable number of receptacles" (column 5, lines 6-10), and since six would certainly be considered a reasonable number.

14. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Reese et al as applied to claim 1 above, in view of Farrell [Pat. No. 6,326,047].

Reese et al teach the above mentioned concepts. Reese et al do not teach a peristaltic pump. Farrell teaches a blending device comprising a peristaltic pump (Figure 5, 26). It would have been obvious to one of ordinary skill in the art to incorporate the peristaltic pump of Farrell into the invention of Reese et al since both are directed to blending

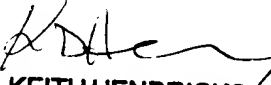
devices, since Reese et al already includes liquid supply sources, and since the peristaltic pump of Farrell was a commonly known means to provide a metered supply of liquid as shown by Farrell.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew Becker
January 24, 2002


KEITH HENDRICKS
PRIMARY EXAMINER